

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WORLDWIDE EQUIPMENT, INC.	:	CASE NO. C-1-01-747 (Judge Beckwith)
Plaintiff/Counterclaim	:	
Defendant	:	
v	:	
MILLER INDUSTRIES, INC.	:	
Defendant/Counterclaim	:	
Plaintiff / Cross-claim Plaintiff	:	
WORLDWIDE EQUIPMENT, INC.	:	<u>ANSWER OF FONTAINE</u> <u>MODIFICATION COMPANY</u>
Counterclaim Defendant/	:	<u>TO CROSS-CLAIM OF DEFENDANT</u>
Third Party Plaintiff	:	<u>DEFENDANT MILLER INDUSTRIES</u>
v	:	<u>TOWING EQUIPMENT, INC. AGAINST</u>
FONTAINE MODIFICATION CO.	:	<u>THIRD-PARTY DEFENDANT</u>
Third Party Defendant /	:	<u>FONTAINE MODIFICATION COMPANY</u>
Cross-claim Defendant	:	

FIRST DEFENSE

1. Cross-claim Defendant Fontaine Modification Company (“Fontaine”) is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1,2, 3, 5, 6, 7, 8, 9, 10, and 12 in the Cross-claim.

2. Fontaine admits paragraph 4 in the Cross-claim.
3. Fontaine denies paragraphs 11, 13, 15, 16, 17, 19 and 20 in the Cross-claim.
4. In response to paragraphs 14 and 18 in the Cross-claim, Fontaine reasserts and incorporates by reference the admissions, denials, and denials by lack of knowledge as otherwise asserted herein.
5. Fontaine denies each and every allegation set forth in the Cross-claim, unless said allegation has been specifically and expressly admitted above.

SECOND DEFENSE

6. All equipment sold to or delivered to Fontaine by Worldwide Equipment, Inc. or Miller Industries, Inc. (“Miller”) was paid for by Fontaine, with payment made to either Worldwide Equipment, Inc. or Miller Industries, Inc.
7. Documentation of deliveries and payments will be provided to the parties and the Court.

THIRD DEFENSE

8. The claims of Miller are barred by want of consideration and failure of consideration.

FOURTH DEFENSE

9. Payment was made to the apparent agent of Worldwide Equipment, Inc. for all material delivered to Fontaine or sold to Fontaine.

FIFTH DEFENSE

10. The claims of Miller are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, and accord and satisfaction.
11. The claims of Miller are barred, in whole or in part, by the failure of conditions precedent.
12. The claims of Miller are barred by its own fraud, misrepresentation, bad faith and/or unclean hands.
13. Miller failed to mitigate and minimize some or all of its damages, if any such damages exist.

SIXTH DEFENSE

14. Fontaine acted at all times with good cause and in good faith.

/s/ Gordon D. Arnold

Gordon D. Arnold #0012195

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Attorney for Cross-claim Defendant,
Fontaine Modification Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served upon Peter J. Stautberg, Attorney for Worldwide Equipment, Inc., 1400 Provident Tower, One East Fourth Street, Cincinnati, OH 45202; and W. Breck Weigel, Attorney for Miller Industries, Inc., Suite 2100 Atrium Two, 221 East Fourth Street, Cincinnati, OH 45202, this 26th day of November, 2003, by ordinary mail.

/s/ Gordon D. Arnold

Gordon D. Arnold